

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,  
*Plaintiff,*  
v.  
DANA JARVIS, et al.,  
*Defendants.*

No 1:05cr01849-15 JH

**NOTICE OF UNAVAILABILITY OF DEFENSE COUNSEL**

IN SUPPORT of Defendant Hothan's *Notice of Unavailability of Defense Counsel*, he states:

1. Please notice that defense counsel will not be available due to previously scheduled matters on the following dates and times:

Date(s) ..... Matter(s)

To be announced ..... US v. John and Violet Gould, 03cr2274 JB

7-24 November 2006 ..... Murder Trial, retrial after hung jury, State of New Mexico v. Jose and Armando Gutierrez, State of New Mexico, County of Santa Fé, Cause No D0101 CR 2005-00265 (*see* exhibit 1 attached, *Amended Scheduling Order* as filed on 15 August 2006

2. Defendant waives under 18 U.S.C. 3161(h)(8)(A) and 3161(h)(8)(B)(iv) any right to speedy trial caused by delay attributed to defendant because of his counsel's unavailability. Despite the exercise of due diligence, the failure to vacate a hearing at which defense counsel cannot attend due to previously scheduled matters would deny effective assistance of counsel. 18 U.S.C. §§3161(h)(8)(B)(iv).

WHEREFORE defendant requests that the court:

- A. Schedule any foreseeable hearings for such time and date, other than those set forth in paragraph one, convenient to all concerned; and,
- B. Grant such further relief as justice requires.

*/s/ electronic signature*

Stephen D Aarons  
Counsel for Defendant Hothan  
300 Catron Street, Suite A  
PO Box 1027  
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505/984-1100; Fax: 505/984-1110

Certificate of Service

On the date of filing I caused an electronic copy of this pleading to be transmitted to the following counsel of record:

James Braun  
US Attorney, District of New Mexico  
Post Office Box 607  
Albuquerque NM 87103-0607

/s/ Stephen D Aarons  
Counsel for Defendant Hothan

ENDORSED  
First Judicial District CourtFIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

AUG 15 2006

No. D-0101-CR-200500265  
D-0101-CR-200600057Santa Fe, Rio Arriba &  
Los Alamos Counties  
PO Box 2268  
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO,

Plaintiff,  
vs.JOSE GUTIERREZ  
DOB: 10/14/80,

Defendant.

DISCOVERY ORDER  
and  
AMENDED TRIAL SCHEDULING ORDER

## 1. Discovery.

a. The District Court Clerk shall, upon written request of a party, promptly provide a copy of the Grand Jury tapes in this cause;

b. The District Attorney shall provide to the Defendant(s) the discovery specified in SCRA 1986, 5-501 **within fifteen (15) days** of the date this order is entered, unless otherwise ordered by the Court.

**The Court herewith establishes the following schedule in this case:**

2. **Pre-Trial Motions.** All motions shall be filed no later than forty-five (45) days after arraignment, unless otherwise ordered by the Court. Motion hearings shall be set on request of either party.

3. **Pre-Trial Hearing.** The Pre-Trial hearing authorized by SCRA 1986, 5-603 is set for September 15, 2006 at 2:00 p.m. If the Defendant has been released on bond, he or she must be present for this hearing. Defendants must be present for this hearing.

4. **Docket Call.** Docket call for this case is set for October 20, 2006 at 8:15 a.m. Defendants in custody need not appear at Docket Call.

5. **Trial.** **The Trial of this matter is set for November 7, 2006 at 8:30 a.m.** at which time the attorneys and the Defendant must appear for jury selection and case scheduling.

6. **Jury Instructions.** The State and the Defendant(s) shall submit proposed jury instructions at the close of the evidence to address any unexpected matters that arise during the course of trial.

7. **Rule Date.** The Rule 5-604 date for trial in this case is December 2, 2006.

STEPHEN PFEFFER, District Judge

State's Attorney \_\_\_\_\_ David Foster  
 Attorney for Defendant \_\_\_\_\_ Steve Aarons

Exhibit 1 to Notice of Non-Availability